

(1994) 09 DEL CK 0057

In the Delhi High Court

Case No : Interim Application No. 456 of 1993 and Suit No. 223 of 1991

Kripal Singh Khurana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1994) 30 DRJ 687

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : S. Poddar and M.C. Garg, for the Appellant;

Judgement

R. Lahoti, J.

(1) This Order dispose of I.A. No.456 of 1993, an application u/s 5 of the Limitation Act seeking condensation of delay in filing objections u/s 30 of the Arbitration Act, 1940. The applicant is Union of India, the Respondent No.1.

(2) It appears that the petitioners had entered into a contract with the Union of India, Ministry of Urban Development, New Delhi. Some disputes arose between the parties. Consistently with the arbitration clause contained in the contract between the parties, the disputes were referred to the arbitration of Shri H.N. Chandwani. The arbitrator made an award. It has been filed in the Court.

(3) Notice of filing of the award was issued by the Court to the Secretary, Ministry of Urban Development. It was served on him on 15.5.91. The objections have been filed on 7.8.91. There is thus a delay of about 53 days in preferring the objections.

(4) It is stated in the application u/s 5 of the Limitation Act that before the arbitrator the matter was being pursued by the Executive Engineer, PWD(DA). A copy of the award was delivered to the Executive Engineer by the Arbitrator while delivering the award. Though the notice of filing of the award in the court was

served on the Secretary, through the office procedure the notice reached the Executive Engineer dealing with the matter on 24.7.91. The Executive Engineer approached the Chief Engineer by letter dated 27.7.91 for securing appointment of Government Counsel. The letter was processed. On 1.8.91, the Government Counsel was appointed. The counsel was instructed by the Executive Engineer on 2.8.91. After preparation of the objection petition, it was filed in the Court on 7.8.91. Delay in preferring the objections is sought to be condoned by pleading that the same was bona fide.

(5) On behalf of the plaintiff-petitioner, the prayer for condensation of delay has been vehemently opposed by filing a written objection. At the time of hearing, the learned counsel for the plaintiff- petitioner has placed reliance on the following decisions for the purpose of submitting that service on the Secretary of the concerning Department is a good service turn commencement of the period of limitation; that Government as a litigant cannot be treated differently from the private litigants; and that merely because the Executive Engineer was belatedly informed of the filing of the award it cannot be a ground for condoning the delay. It is also submitted by the learned counsel that by lapse of time prescribed for preferring the objections to the award, a valuable right has accrued in favor of the plaintiff-petitioner who is vitally interested in seeking the award made rule of the court ; and that such right cannot be lightly taken away. The cases relied on are:- i) 1973 (1) Del 905 (M/S. C. Lyall and Company Vs. Union of India and Others) ii) 1992 Rlr 37 (Ajindersingh Vs . UOI) iii) Kirpal Singh Khurana Vs. Union of India and Others, iv) 1990 (2) Alr 197 (Kanishka Builders Vs. Union of India and another)

(6) In so far as the abstract propositions of law canvassed by the plaintiff-petitioner are concerned, there cannot be two opinions. There can also be no quarrel with the propositions of law laid down in the rulings relied on by the learned counsel. Still the question left for consideration is whether the defendant-respondent no. 1 has made out a sufficient cause for condensation of delay within the meaning of Section 5 of the Limitation Act.

(7) The learned counsel for the defendant- respondent no. 1 has placed reliance on the law .laid down by their Lordships of the Supreme Court in the G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, and Collector Land Acquisition Anantnag Vs. Mst. Katiji AIR 1987 Sc 1533 Decision of this Court in Bank of India Vs. M/s. Mehta Brothers and others AIR 1991 Del 194 has also been relied on,

(8) Following the law laid down by their Lordships of the Supreme Court in at least eight decisions, I had an occasion to sum up the approach to be adopted while dealing with-a prayer for condensation of delay u/s 5 of the Limitation Act in the following words in Biniyabai Vs. Sikandar Khan, :-

"WHILE dealing with applications seeking condensation of delay u/s 5 of the Limitation Act or for setting aside of abatement under Rule 9 Order 22 Cpc, the

approach has to be liberal and judicious guided by the paramount considerations of. not depriving a litigant ordinarily of adjudication of rights on merits. Hyper-technical, too strict, and pedantic approach as may cause injustice, has to be avoided".

In Mst. Katiji's case (supra), their Lordships of the Supreme Court have taken note of the file pushing ethos prevalent in the Government departments and expected the courts of taking a practical view of the things.

(9) It is true that service of notice on the Secretary of the concerning Department of the Union of India satisfies the requirement of law in so far as the service of notice is concerned. Still, it cannot be lost sight of that the Secretary would not himself deal with each and every matter relating to the department. It was the Executive Engineer concerned who was dealing with the case who had to be found out, contacted and told that he was to take care of the case and deal with it. It does not appear that at any point of time or at any stage, there was any unreasonable delay. Nothing short of gross negligence, misconduct or contumacy should deprive a litigant of an opportunity of hearing on merits. Looked at from that angle, the delay which has taken place in preferring the objections deserves to be condoned and the defendant no.1 deserves to be allowed an opportunity of securing an adjudication of the objections preferred on merits. I am fortified in the view which I have taken by decision of their Lordships of the Supreme Court in Union of India Vs: N. Das R. Israni (SLP(civil) No-417/1993 decided on 12.4.1993) and a decision of this Court in M/s. R.S. Builders Vs. Union of India (Suit No.2809/90. order dated 29.3.1995).

(10) In Union of India VN. Dass R. Israni (SLP No. 417 of 1993) the main judgment is delivered by Hon"ble Shri K.Ramaswamy J. His Lordship has observed that delay deserves to be condoned when neither negligence nor inaction nor want of bonafides is imputable; a certain amount of latitude to the Government as a litigant is not impermissible. Referring to the decisions of their Lordships in Mst. Katiji's case (supra) and G. Ramagowda's case (supra) amongst others, his Lordship has stated- "This court has consistently laid down the law that the approach of the court in considering sufficient cause u/s 5 is to advance substantial justice but not pedantic nor legalistic approach . Every attempt should be made to do justice and to avoid injustice. Law makes no distinction between a private person and government. No one would stand to gain by delay in laying the proceedings unless judicial process is taken aid to harass the opponent or to coerce him/it to settle terms with the applicant. Adoption of justice oriented approach advances substantial justice and removes nursing feeling of injustice. Of course, a person having his own firm belief that his cause is just would always remain obstinate to his sense of justice and so would be an exception. Technical approach would be a breeding source for injustice or an impediment to fair adjudication. An aggrieved private person would take instant decision and would pursue diligently appellate or revisional remedy unless prevented by sufficient cause. But Govt acts through bureaucrats.

Delay in deliberations and consequent procrastination unmindful and insensitive to bar of limitation is routine. On many an occasion it is an easy means to deliberately keep back the file for either obvious or maneuvered mechanism to defeat public justice. Experience tells us galore of instances that public exchequer is the easy prey to plunder by prolonged decision making to file an appeal or application and victims are" the tax payers or welfare schemes. Courts would be cognizant to the hard realities and prevailing condition and blind fold to them bread corruption, nepotism and inefficiency. The expression of "explaining every day's delay", if logically extended, would lead to the need for explaining every minute's Or every second's delay leading to grotesque results. That would not be the approach. This Court has taken judicial notice of reality that in Governmental decision making "process no one takes responsibility to final decision attempting to pass on the buck at every stage, resultantly delay in decision making. It is not uncommon that on many, an occasion deliberately the file is kept unmoved for days together turn oblique or inexplicable reasons at the price of public justice. Therefore, pragmatic approach and justice orientation demands a lean the latitude towards public Justice based upon the facts and circumstances in each case unless wah ton delay is discernible from the record

(11) HON"BLE shri R.M. Sahai J in his separate judgment has not approved of the State being treated as a favored litigant and hag emphasised the delay being tested, on the touchstone of -" if delay in taking, the proceedings was bonafide ". His Lordship has reiterated the well settled principles, of. construing the S.5 of Limitation Act liberally in facts and circumstances of each case.

(12) In the case of RS. Builders (supra) the facts were more or less identical with the case at hand. There was an executive engineer Pwd in-charge of the litigation and pursuing the matter before the Arbitrator. The notice of filing of the award Was not given to him but to the Ministry of Development through its Secretary. There was a delay in film the objections This Court held-""

"ADMITTEDLY the work awarded to R.S." Builders pertain to Pwd XVt Delhi Administration. It is the Executive Engineer of this Division who has been pursuing this matter before the Arbitrator. No notice of filing of the award was sent to Delhi Administration as Delhi Administration was not made a party to these proceedings. Notice was sent to Union of India through Secretary, Ministry of Urban Development, Nirman Bhawan, who after receipt of the notice forwarded the same to Pwd Delhi Administration, the Concerned party. The Chief Engineer after the receipt of notice immediately sent it to the Executive Engineer on 30.4.91 for taking appropriate action, who immediately contacted the Government counsel to file objections and these objections were filed within 30 days from. the receipt of the notice in the office Of the Executive Engineer. There is no mala fide or intentional delay in filing the objections in this case and Therefore, I condone the delay in filing-the objections under Sections 30 and 33 of the Arbitration Act."

(13) For the foregoing reasons, the I.A.456/93 is allowed, The delay in filing. IA

8994/91 is condoned. The latter application shall be considered on merits.